

ARKANSAS COURT OF APPEALS

DIVISION I
 No. CA08-320

SUNBELT BUSINESS BROKERS OF
 ARKANSAS, INC., and MARVIN
 WINSTON

APPELLANTS

V.

NANCY JAMES

APPELLEE

Opinion Delivered May 6, 2009

APPEAL FROM THE PULASKI
 COUNTY CIRCUIT COURT,
 [NO. CV-2004-10633]

HONORABLE WILLARD
 PROCTOR, JR., JUDGE

REMANDED

DAVID M. GLOVER, Judge

Sunbelt Business Brokers of Arkansas, Inc. and Marvin Winston appeal from a \$73,390 judgment for appellee Nancy James, challenging the sufficiency of the evidence. This is the second time that this dispute has been before us. On May 23, 2007, we remanded the appeal in CA06-948, so that appellants could supplement the record and comply with our briefing requirements to demonstrate whether the appeal was from a final order. As before, we have no choice but to remand for supplementation of the record and rebriefing.

Because the facts are set forth in our earlier opinion, we need not go into detail here. Briefly, appellants assisted Thomas Cormier in the sale of some Subway stores. Appellee and her company, NARP, Inc., which purchased the stores, later sued appellants, Cormier, Lycor, Inc., which owned and sold the stores and of which Cormier was a co-owner and officer, and Roy Gorcyca, Sunbelt's sole shareholder. In her complaint, appellee alleged that

Sunbelt had been dissolved and that Gorcyca was responsible for its liabilities. In the 2006 judgment, the trial court found that appellants had committed fraud and awarded \$73,390 to appellee from Sunbelt. Sunbelt and Winston appealed, and we remanded to settle the finality issue.

As it turned out, a final order had not yet been entered. On remand, the circuit court entered a supplemental judgment on November 13, 2007. In that judgment, the court dismissed appellee's claims against Cormier, Cormier's claims against Sunbelt and Gorcyca for indemnity, and Gorcyca's claims against Cormier. The court granted Cormier's claim against appellee for the unpaid portion of the purchase price and expressly stated that Cormier's cross-complaint against Gorcyca stated facts upon which relief could be granted. Appellants filed their notice of appeal on December 11, 2007, initiating this appeal. On October 3, 2008, appellee filed a motion with this court under Ark. R. Civ. P. 60(b) to amend the May 2, 2006 judgment because, although the circuit court had found that Winston and Sunbelt were liable for fraud, it had awarded damages only against Sunbelt. We remanded the case to the circuit court on October 22, 2008. On October 31, 2008, the circuit court entered an amended judgment awarding damages to appellee against Sunbelt and Winston, who filed another notice of appeal. Appellants then filed a supplemental record and a substituted brief. Appellee chose to rely on her former brief.

Despite the fact that we now have the benefit of two records, we are still unable to resolve the finality issue. As before, the record in this appeal is abbreviated. The record filed in this appeal includes the judgments and notices of appeal filed after we remanded. We have

also reviewed the abbreviated record filed in CA06-948, which included the trial transcript; all exhibits; the first amended complaint; Cormier's, Winston's, and Gorcyca's answers to the first amended complaint; Gorcyca's cross-complaint against Cormier; Cormier's answer to Gorcyca's cross-complaint; the first judgment; and the first notice of appeal.

It appears that the trial court has not yet decided Cormier's remaining claim against Gorcyca. In the November 13, 2007 supplemental judgment, the court stated:

4. Inasmuch as the Court finds that Cormier is not liable to James for fraud or constructive fraud, the claims of Cormier for indemnity against Sunbelt and Roy Gorcyca ("Gorcyca") for breach of contract and negligence are moot and thus denied and dismissed.

5. The cross-complaint of Cormier against Gorcyca states facts upon which relief can be granted. Cormier is not guilty of laches, waiver, or unclean hands. The claims of Cormier are not barred by collateral estoppel or *res judicata*. The alleged affirmative defense of Gorcyca to the claims of Cormier, on such theories are denied and dismissed.

It also appears that appellee has an unresolved claim against Gorcyca. In her first amended complaint, she alleged that Gorcyca, as Sunbelt's agent and only shareholder when it was dissolved, was liable for the unpaid claims against Sunbelt. The amended judgment on October 31, 2008, however, awarded appellee damages against Sunbelt without mentioning Gorcyca's liability. Both of these omissions would prevent the judgment from being final. An order is not final and appealable merely because it settles the issue as a matter of law; to be final, the order must also put the court's directive into execution, ending the litigation or a separable branch of it. *Morton v. Morton*, 61 Ark. App. 161, 965 S.W.2d 809 (1998).

The question of whether an order is final and subject to appeal is a jurisdictional question that this court will raise on its own. *Bevans v. Deutsche Bank Nat'l Trust Co.*, 373 Ark.

105, __ S.W.3d __ (2008). Absent a certificate from the circuit court directing that the judgment is final, an order that fails to adjudicate all of the claims as to all of the parties is not final for purposes of appeal. *Id.*; Ark. R. Civ. P. 54(b)(2). Here, the record does not reflect a Rule 54(b) certificate. It is, therefore, possible that there is not yet a final order, and that this court has no jurisdiction to hear the appeal. Under Ark. R. App. P.–Civil 6(c), we shall not affirm or dismiss a case based on an abbreviated record if the record was abbreviated in good faith either by agreement or without objection from the appellee. Appellee has not objected.

In light of Rule 6, recognizing that this action involves both multiple parties and claims, we give appellants the opportunity, within fifteen days from this date, to supplement the record so that we can determine whether the judgment appealed from is final. *See Thomas v. Avant*, 369 Ark. 211, 252 S.W.3d 135 (2007). The supplemental record shall include all claims for relief, and all orders disposing of any party to, or any claim presented in, the proceeding from which this appeal has been brought. Appellants will then be required to file a substituted abstract, brief, and addendum that includes the additional pleadings and orders, within fifteen days after the supplemental record is filed. We caution that, in doing so, appellants must follow the requirements of Ark. Sup. Ct. R. 4-2. *See Bryan v. City of Cotter*, __ Ark. __, __ S.W.3d __ (Apr. 2, 2009). Appellee may file a substituted response brief in the time prescribed by the supreme court clerk or she may rely on her former brief. Appellants' reply brief will be due fifteen days after appellee files her brief.

Remanded.

HENRY and BROWN, JJ., agree.

